S.B. CIVIL WRIT PETITION NO.2886/2007.

Smt.Shanti
Vs.
The Civil Judge (Jr.Div.) Kathumar,
Distt.Alwar.

Date of order : 27/4/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri H.K. Saini for the petitioner.

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The petitioner has filed this writ petition challenging the order dated 3/2/2007 whereby his application under Order 6 Rule 17 CPC seeking amendment in the plaint has been dismissed by the trial court. Originally, suit was filed seeking injunction against the defendant-respondents directing them not to interfere in the peaceful possession and enjoyment of the disputed property. In the application seeking amendment in the plaint, the plaintiff-petitioner came up with the plea that the defendants had trespassed over their property during pendency of the suit. Learned trial court rejected the application for amendment on the ground that if the amendment is permitted, this

will change the very nature of the suit. While originally the suit was filed for seeking injunction against the respondents, now if the amendment sought for is permitted, this would become a suit for recovery of possession. On perusal of the impugned order as also the prayer made in the original plaint and amendment application, I find that the reasons as given by the learned trial court that the amendment if allowed would change nature of the suit is well founded. In such circumstances, appropriate remedy for the petitioner would be if so advised to file an independent suit for recovery of possession. Impugned order therefore in my considered view does not suffer from any error warranting interference by this Court under Article 226 of the Constitution of India.

The writ petition is accordingly dismissed with the above observations.

(MOHAMMAD RAFIQ), J.

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